IN THE COURT OF APPEALS OF IOWA

No. 1999-212 (9-436)/ 98-2119
Filed November 23, 1999

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CLERK SUPREME COURT

DAVID S. DEVORE,
Appellant,

vs.

THE DALLAS GROUP OF AMERICA, INC.,
Appellee.

Appeal from the Iowa District Court for Muscatine County, C. H. Pelton, Judge.

Plaintiff appeals the grant of defendant's summary judgment against plaintiff's claim for the non-payment of a yearly bonus. **AFFIRMED.**

Jay T. Schweitzer and Timothy K. Wink of Schweitzer & Wink, Columbus Junction, for appellant.

Eric M. Knoernschild of Hintermeister, Knoernschild & Eichelberger, Muscatine, for appellee.

Considered by Huitink, P.J., Mahan, J., and Habhab, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

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HABHAB, J.

Plaintiff filed suit against his former employer because he had not been paid a yearly bonus. The district court granted summary judgment to the employer, finding there was no written or oral contract for the payment of a bonus. Plaintiff appealed. He claims summary judgment in this case is improper. We affirm on appeal.

David DeVore was employed by Reagent Chemical as an assistant material handler in September 1986. In 1989, Dallas Group of America, Inc., took over operation of the company. Beginning in 1993, Dallas Group, at its discretion, gave a bonus to its employees. The bonus was generally paid in the spring and was given to those employees who were then and at that time in the company's employ.

DeVore voluntarily quit his position on January 2, 1998. When DeVore quit his employment with Dallas Group he received vacation pay and his profit sharing fund. He now claims he is entitled to a bonus at least equal to the amount paid on March 1, 1998, to those employees who were then in the employ of the company.[1]

In a deposition, John Felowitz, the chief financial officer of Dallas Group, testified there was no written bonus plan. Each year Felowitz met with the chairman of the board, the chief executive officer, and the president of the company to determine the amount the employees would receive as a bonus for the previous year,

[1] Those employees at the plant where DeVore worked received a bonus equal to the amount paid for eighty-eight hours of work. DeVore did not receive a bonus. Based on the amount paid to other employees, he would have received a bonus of about $1139.

or whether a bonus would be paid at all. Felowitz stated a bonus would only be paid to employees who maintained employment on the date the bonuses were paid.

DeVore filed suit against Dallas Group. He claimed the bonus should be considered "wages" under Iowa Code chapter 91A. DeVore asked to receive the bonus, liquidated damages, attorney fees, and court costs. Dallas Group filed a motion for summary judgment. The district court granted the motion. The court found: (1) there was no written or oral contract for the payment of a bonus; (2) DeVore was not entitled to a bonus under the company's policy because he was not an employee at the time the bonus was declared; (3) the company's bonus policy was too indefinite to be enforced in court; and (4) DeVore voluntarily quit and was not entitled to a bonus. DeVore appealed.

Our review of a grant or denial of summary judgment is for correction of errors at law. Iowa R. App. P. 4. Summary judgment is only appropriate when no genuine issue of material facts exists and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c); *Whalen v. Connelly,* 593 N.W.2d 147, 152 (Iowa 1999). An issue is genuine if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Financial Mktg. Serv., Inc. v. Hawkeye Bank & Trust,* 588 N.W.2d 450, 455 (Iowa 1999). We review the record in the light most favorable to the party opposing summary judgment. *Dickerson v. Mertz,* 547 N.W.2d 208, 212 (Iowa 1996).

DeVore contends the bonus should be considered "wages" under Iowa Code chapter 91A. Section 91A.8 provides that when an employer intentionally fails to pay an employee wages, the employer shall be liable for the wages, plus liquidated damages, attorney fees, and court costs. Iowa Code § 91A.8 (1997).

DeVore relies on *Dallenbach v. MAPCO Gas Prod., Inc.*, 459 N.W.2d 483, 488 (Iowa 1990), which found an annual bonus should be considered "wages" under the definition found in section 91A.2(7).[2] In *Dallenbach,* however, the employee was contractually entitled to a bonus calculated by a set formula and due at a certain time. *Id.* at 486. When the employee accepted employment he was promised a monthly salary, benefits, and an annual bonus calculated on a certain formula. *Id.* at 487. The supreme court concluded the annual bonus was clearly part of the compensation owed him for his labor or services, and should be considered "wages" under section 91A.2(7)(a). *Id.* at 488. *See also Hornby v. State,* 559 N.W.2d 23, 26 (Iowa 1997).

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[2] The definition of wages was formerly found in section 91A.2(4). Wages are now defined in section 91A.2(7) as follows:

> 7. *"Wages"* means compensation owed by an employer for:
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> *a.* Labor or other services rendered by an employee, whether determined on a time, task, piece, commission, or other basis of calculation.
>
> *b.* Vacation, holiday, sick leave, and severance payments which are due an employee under an agreement with the employer or under a policy of the employer.
>
> *c.* Any payments to the employee or to a fund for the benefit of the employee, including but not limited to payments for medical, health, hospital, welfare, pension, or profit-sharing, which are due an employee under a policy of the employer. The assets of an employee in a fund for the benefit of the employee, whether or not such assets were originally paid into the fund by an employer or employee, are not wages.
>
> *d.* Expenses incurred and recoverable under a health benefit plan.

In the present case, the bonus program began after DeVore commenced employment, and thus, he did not accept employment due to a promised bonus. There was no evidence DeVore was promised a bonus as an inducement to accept different work or a different method or rate of payment. *See Hilgenberg v. Iowa Beef Packers, Inc.*, 175 N.W.2d 353, 356 (Iowa 1970). There was no evidence DeVore or any of the other employees was contractually entitled to a bonus of any specific amount, or to any bonus at all. It is undisputed that the employer could give a bonus to some and not others of their employees in any amount it determined. Further, only those individuals who were in the employ of the company were entitled to a bonus. In addition, the employer could elect to give no bonuses at all if it so chose.

This case is similar to *Drake v. Block,* 247 Iowa 517, 74 N.W.2d 577 (1956). The supreme court there stated:

> It appears without dispute that all matters concerning this bonus, time of payment, and the amount thereof, rested solely and exclusively with appellant Walter M. Block. He states that he had no fixed plan or schedule to be followed in determining the amount. The record clearly shows such bonuses, as were paid, followed no set plan or percentage of salary paid. Under the well recognized rules of law here applicable, any attempt to recover a bonus under an express contract must fail as too indefinite and uncertain.

Id. at 521, 74 N.W.2d at 580.

We determine the grant of summary judgment in this case was proper. There was no evidence of an oral or written contract for the payment of a bonus. DeVore admitted he did not know if a bonus would be paid each year, or if a bonus was paid, the amount which would be paid. Thus, as in *Drake,* all parties agree there was no

specific bonus plan, which renders the alleged bonus plan too indefinite and uncertain to be enforced. *See Audus v. Sabre Communications Corp.*, 554 N.W.2d 868, 872 (Iowa 1996). Dallas Group's bonus policy was too indefinite to be enforced in court. Furthermore, DeVore was not entitled to a bonus under the company's policy because he was not an employee at the time the bonus was declared.

We affirm the decision of the district court which granted summary judgment to defendant in this case. Costs of this appeal are assessed to plaintiff.

AFFIRMED.